

July 24, 2002

**AMEND BOARD REPORT 97-1217-PO3 POLICY ON THE  
FAMILY AND MEDICAL LEAVE ACT (FMLA)**

**Subject:** Policy on the Family and Medical Leave Act (FMLA).

**Issues:** ~~The Chicago School Reform Board of Trustees~~ Board of Education of the City of Chicago and the Chicago Public Schools are committed to compliance with the Family Medical Leave Act of 1993, 29 C.F.R. Part 825 et seq. The Family and Medical Leave Act guarantees certain leave rights to eligible employees, as outlined below. ~~A committee consisting of representatives from Human Resources, Budget, Risk and Benefits Management, and Law has~~ CPS administrators and attorneys from the Law Department have examined CPS' current leave benefits granted by Board Rule, collective bargaining agreements, and state and federal law to ensure that this FMLA policy does not conflict with or contradict current employee leave benefits.

**History of Board Action:** ~~None~~ December 17, 1997 adoption of Family and Medical Leave Act policy, Board Report 97-1217-PO3

**Recommendation:** Revise the current policy as set forth below.

**POLICY ON FAMILY AND MEDICAL LEAVE**

**I. ELIGIBILITY**

- A)** Any CPS employee who has been employed for at least 12 months and who has worked a minimum of 1,250 hours in the preceding twelve months may take an unpaid leave of absence for the following reasons:
- (1) In order to provide care for a son or daughter during the 12-month period after the birth of that child ~~to the employee or the employee's spouse;~~
  - (2) In order to provide care for a son or daughter during the 12-month period after the child is adopted by or placed in the foster care of the employee;
  - (3) In order to provide care for a son, daughter, spouse or parent with a serious health condition; or
  - (4) In order to recover from or treat the serious health condition of the employee.
- B)** A CPS employee is entitled to a total of 12 work weeks of unpaid leave for the above- stated reasons during a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Additionally, leave may be taken in increments of less than 12 weeks. Any leave taken for the above-stated purposes will be counted towards the 12 weeks of allowed FMLA leave.
- C)** A husband and wife who are eligible for FMLA leave and who are both employed by Board of Education of the City of Chicago will be limited to a combined total of 12 weeks of unpaid FMLA leave during any 12 month period if the leave is taken:
- (1) for birth of the employee's son or daughter or to care for the child after birth;
  - (2) for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
  - (3) to care for the employee's parent with a serious health condition.

II. "SERIOUS HEALTH CONDITION"

- A) A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition which involves ~~any period of incapacity or treatment connected with inpatient care in a hospital or similar facility or which involves a period of continuous treatment by a medical provider, together with at least one of the following:~~ inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or
- B) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:
- (1) Incapacity for more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
    - (a) treatment two or more times by a health care provider, or a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., a physical therapist) under orders of, or referral by, a health care provider; or
    - (b) ~~and any subsequent~~ treatment by a health care provider on one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
  - (2) Any period of incapacity due to pregnancy, or for prenatal care.
  - (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A "chronic serious health condition" is one which requires periodic visits to a health care provider (or other health care professional under the supervision of a health care provider); continues over an extended period of time; and may cause episodic rather than continuing periods of incapacity (e.g., asthma, diabetes, or epilepsy).
  - (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease, stroke, or a terminal disease). In such instances the individual must be under the supervision of, but need not be receiving active treatment from, a health care provider.
  - (5) A period of absence to receive or recover from multiple treatments by, or as prescribed by, a health care provider either for restorative surgery after an accident or other injury or for a condition (including but not limited to cancer, severe arthritis or kidney disease) that would likely result in a period of incapacity of more than three consecutive days in the absence of medical intervention or treatment.
- C) The term "treatment," ~~for purposes of this section as used in this policy,~~ includes: examinations to determine if a serious health condition exists and evaluations of the condition; a regimen of therapy requiring special equipment to resolve or alleviate a health condition (e.g., oxygen); or a course of prescription medication under the supervision of a health care provider. The term "treatment", however, does not include routine physical, eye, or dental examinations; conditions for which cosmetic treatments are administered (unless treatment this involves inpatient hospital care or unless complications arise); or a regimen of treatment that consists of taking over-the-counter medications, bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.

- D) Substance abuse may constitute a serious health condition under this policy if the condition satisfies the definition set forth in sections II(A) or II(B) above. FMLA leave may only be taken for treatment for substance abuse by a health care provider or a provider of health care services on referral by a health care provider. Absence resulting from the employee's substance use, but unrelated to treatment, does not qualify for FMLA leave.

### III. NOTICE

- A) Employees ~~are required to~~ must provide 30 days advance notice ~~when before~~ FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days' notice is not practicable because of a lack of knowledge of approximately when a leave will be required to begin, due to a change of circumstances or a medical emergency, notice must be given as soon as practicable. Medical certification or other documentation will be required by CPS to support the request for leave. Further, CPS may require and/or initiate periodic status reports on the condition of an employee on an approved leave.
- B) When the approximate timing of, or the need for, leave is not foreseeable, an employee should give notice as soon as practicable under the facts and circumstances. It is expected that an employee will give notice within two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.
- C) The employee should provide notice in writing by submitting the appropriate CPS request for leave of absence form. However, notice may be provided in person, by telephone, telegraph, fax transmittal or other electronic means. If the employee is unable to personally provide notice, notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible person).

### IV. RETURN FROM LEAVE

An employee returning from a leave of twelve weeks or less under this policy will be restored to his or her former position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

An employee's position will not be held beyond twelve weeks unless required pursuant to a collective bargaining agreement. An employee who fails to return to work at the expiration of his or her leave will be considered to have abandoned his or her position. The employee will not accrue seniority or benefits during the leave. An employee returning from a leave of absence for the employee's own serious health condition will be required to submit documentation of his or her current health status in order to be reinstated.

### V. CONCURRENT USE OF BENEFIT DAYS

Employees are required to use accrued vacation and/or sick days concurrently with any leave taken pursuant to this policy, subject to applicable restrictions in the Board rules and/or collective bargaining agreements. Additionally, leaves of absences provided for by collective bargaining agreements, Board Rules, or other Board policies may be taken for the above-stated reasons, and will be counted towards the employee's 12 weeks of allowed FMLA leave. To the extent an employee is covered by a collective bargaining agreement with a provision that provides leaves of absence benefits which are greater than those described in this policy, the provision of the collective bargaining agreement shall govern.

All approved worker's compensation time greater than three working days shall run concurrently with eligible FMLA time.

## VI. HEALTHCARE BENEFITS

During the 12-week period of approved FMLA leave, an employee's health care benefits will be maintained, so long as the employee continues to make his or her employee contribution as appropriate. An employee who does not return to work after FMLA leave may be required to reimburse CPS for any health care benefit expenses associated with insuring the employee during said leave.

## VII. INSTRUCTIONAL EMPLOYEES

- A) Instructional Employees, defined as those whose principal function is to teach and instruct students in a class, a small group, or an individual setting, are subject to special FMLA leave rules:
- (1) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently and the any period during the summer vacation when the employee would not have been required to report for work is not counted against the employee's FMLA leave entitlement.
  - (2) If the an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employee will be required to take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment.
  - (3) If an instructional employee does not give required notice of foreseeable FMLA leave (see section III above) to be taken intermittently or on a reduced leave schedule, the employee may be required to take an FMLA leave of a particular duration or to delay taking the leave until the notice provision has been met.
  - (4) If an instructional employee begins a leave more than five weeks before the end of a semester, the leave would last at least three weeks, and the employee would return to work during the three-week period before the end of the semester, the employee ~~must~~ may be required to continue taking the leave until the end of the semester.
  - (5) If an instructional employee begins a leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a semester, the leave would last more than two weeks, and the employee would return to work during the two week period before the end of the semester, the employee ~~must~~ may be required to continue taking the leave until the end of the semester.
  - (6) If an instructional employee begins a leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a semester, and the leave would last more than five working days, the employee may be required to continue taking the leave until the end of the semester.
- B) For purposes of this policy "semester" means the end of the second quarter marking period and the end of the fourth quarter marking period.

**VIII. KEY EMPLOYEES**

- A) Key Employees are defined as those salaried FMLA-eligible employees who are among the highest paid ten percent of all CPS employees. A key employee may be denied reinstatement if such denial is necessary to prevent substantial and grievous economic injury to the operations of CPS, provided that at the time the employee gave notice of the leave, the key employee was given written notice that reinstatement would be denied after an FMLA leave if the Board determines that reinstatement will cause substantial and grievous economic injury to CPS operations.
  
- B) If the Board believes that reinstatement may be denied to a key employee, the Board will give the employee written notice that she or he qualifies as a key employee, and will fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the Board determines that the employee will not be reinstated from FMLA leave. The Board will provide said notice and information at the time the employee gives notice of the need for FMLA leave, or when FMLA leave begins, if earlier. If the notice cannot be given immediately because of the need to determine whether the employee qualifies as a key employee, the notice will be given as soon as practicable.
  
- C) As soon as practicable after the Board determines that reinstatement of a key employee will cause substantial and grievous economic injury to CPS operations, the Board will notify the employee in writing, by certified mail, of its intent to deny the employee reinstatement on completion of the FMLA leave. It is anticipated that such notice will be given to the employee prior to the commencement of an FMLA leave. However, if the leave has commenced the employee will be given a reasonable time after receiving the notice to return to work.
  
- D) If a key employee fails to return to work within a reasonable time after receiving the notice, CPS will continue to provide health insurance benefits until the end of the FMLA leave period.

**VIII-IX. STATUTORY GUIDELINES**

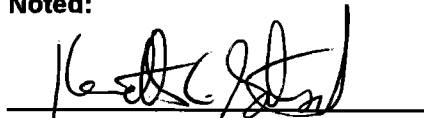
The terms of this policy are to be construed according to the definitions and guidelines of the Family and Medical Leave Act of 1993, 29 C. F. R. Part 825 et seq.

**Legal Review:**

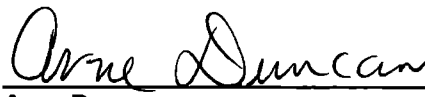
**Approved for Consideration:**

  
Barbara Eason-Watkins  
Chief Education Officer


**Noted:**

  
Ken C. Gotsch  
Chief Fiscal Officer

**Respectfully Submitted:**

  
Arne Duncan  
Chief Executive Officer *by PAT*

**Approved as to Legal Form:**

  
Marilyn F. Johnson  
General Counsel